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**By: Delegate Menes (Chairman, Special Committee on Drug and Alcohol Abuse) and Delegates R. Baker, Boston, E. Burns, Eckardt, Hutchins, Montague, Petzold, Pitkin, and Stup**

Introduced and read first time: January 24, 1997

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 1997

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

**2 Drug Forfeiture Actions - ~~Innocent Owners~~ and Procedure**

3 FOR the purpose of ~~prohibiting the forfeiture of certain property if the owner establishes~~  
 4 ~~by a preponderance of the evidence that the owner neither knew nor should have~~  
 5 ~~known of a certain controlled dangerous substance violation;~~ modifying a provision  
 6 regarding applications for the forfeiture of money or currency contraband to require  
 7 that such applications include a proposed show cause order; modifying a certain  
 8 provision of law to require that a proposed show cause order be served pursuant to  
 9 certain Maryland Rules; requiring the clerk of court to provide copies of the show  
 10 cause order to the petitioner and owner on issuance of the order by the court;  
 11 ~~clarifying that an application for the forfeiture of money or currency contraband~~  
 12 ~~must be filed in the District Court or a lower circuit court which courts have~~  
 13 jurisdiction over certain forfeiture proceedings; lengthening the time period during  
 14 which copies of the summons and complaint must be sent to owners and lienholders  
 15 and certain notices must be posted and published; clarifying language; and generally  
 16 relating to forfeiture of property.

17 BY repealing and reenacting, with amendments,  
 18 Article 27 - Crimes and Punishments  
 19 Section 297(c), (d)(2)(~~+~~), and (h)  
 20 Annotated Code of Maryland  
 21 (1996 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 23 MARYLAND, That the Laws of Maryland read as follows:

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1 **Article 27 - Crimes and Punishments**

2 297.

3 (c) Property or an interest in property described under subsection (b)(4), (9), and  
 4 (10) of this section may not be forfeited if the owner establishes by a preponderance of  
 5 the evidence that the ~~OWNER NEITHER KNEW NOR SHOULD HAVE KNOWN OF THE~~  
 6 violation of this subheading ~~was done~~ COMMITTED without the owner's actual  
 7 knowledge.

8 (d) (2) (I) In the event of seizure pursuant to paragraph (1)(iii) and (iv) of  
 9 this subsection, proceedings under subsection (f) of this section shall be instituted  
 10 promptly, except all proceedings relating to money or currency, that shall be instituted  
 11 within 90 days from the date of final disposition of criminal proceedings that arise out of  
 12 §§ 276 through 302 of this article.

13 ~~(i)~~ (II) All applications for the forfeiture of money or currency  
 14 contraband shall be made by the director of finance of Baltimore City, the county  
 15 treasurer or appropriate county finance officer, municipal treasurer, or the Attorney  
 16 General. The applications shall be by complaint, affidavit and PROPOSED show cause  
 17 order and shall be filed in the District Court or circuit court of the county.

18 ~~(ii)~~ (III) The complaint, affidavit and PROPOSED show cause order  
 19 shall be served in the first instance pursuant to Maryland Rule 2-121 or Maryland Rule  
 20 3-121(a), and thereafter, the summons having been returned non est, the director of  
 21 finance of Baltimore City, county treasurer or appropriate county finance officer,  
 22 municipal treasurer, or Attorney General may proceed pursuant to Maryland Rule 2-122  
 23 or Maryland Rule 3-121(b) or (c).

24 (IV) THE CLERK OF THE COURT SHALL PROVIDE COPIES OF THE  
 25 SHOW CAUSE ORDER TO THE PETITIONER AND THE OWNER ON ISSUANCE OF THE  
 26 ORDER BY THE COURT.

27 (h) (1) Except as provided in SUBSECTION ~~(D)(2)(I)~~ (D)(2)(II) OF THIS SECTION  
 28 AND IN § 4-401(9) [§ 4-401(8)] of the Courts and Judicial Proceedings Article, all  
 29 proceedings under this section shall be instituted in the circuit court by the appropriate  
 30 forfeiting authority.

31 (2) (i) Except as provided under subsection ~~(d)(2)~~ (D)(2)(I) of this section  
 32 and subparagraph (ii) of this paragraph, a complaint seeking forfeiture shall be filed  
 33 within the earlier of:

34 1. 90 days following the seizure; or

35 2. One year following the final disposition of a criminal charge  
 36 for a violation under this subheading giving rise to the forfeiture.

37 (ii) A complaint for the forfeiture of a motor vehicle shall be filed  
 38 within 45 days after the seizure of the motor vehicle.

39 (3) A complaint shall contain the following:

40 (i) A description of the property seized;

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- 1 (ii) A statement of the time and place where seized;
- 2 (iii) The owner, if known;
- 3 (iv) The person in possession, if known;
- 4 (v) The name of any lienholder, if any, if known or reasonably subject  
5 to discovery;
- 6 (vi) An allegation that the property is subject to forfeiture;
- 7 (vii) If the forfeiting authority is seeking to forfeit a lienholder's  
8 interest in property, an allegation that the lien was created with actual knowledge that the  
9 property was being, or was to be, used in violation of this subheading;
- 10 (viii) A statement of the facts and circumstances surrounding the  
11 seizure;
- 12 (ix) A statement setting forth the specific causes or grounds for  
13 forfeiture or both; and
- 14 (x) An oath or affirmation by the forfeiting authority that the contents  
15 of the complaint are true to the best of the forfeiting authority's knowledge, information,  
16 and belief.

17 (4) Within [10] ~~30~~ 15 days after the filing of the complaint:

- 18 (i) Copies of the summons and complaint shall be sent by certified  
19 mail requesting "restricted delivery - show to whom, date, address of delivery" and first  
20 class mail on all known owners and lienholders whose identities are reasonably subject to  
21 discovery, including for real property all owners and lienholders shown in the records  
22 prescribed by law for notice or perfection of the lien.
- 23 (ii) A notice which includes a description of the property, the date and  
24 place of seizure, the known owners and lienholders of the property, the violation or  
25 violations of law alleged to be the basis for forfeiture, a statement that a complaint has  
26 been filed and that the property shall be forfeited if no answer is timely filed, and  
27 instructions on where to file an answer and whom to contact for additional information  
28 concerning the forfeiture shall be:
- 29 1. Posted by the sheriff on the door of the courthouse in which  
30 the action is pending or on a bulletin board within its immediate vicinity;
- 31 2. With respect to real property, posted by the sheriff in a  
32 conspicuous place on the land; and
- 33 3. Except if the property is a boat or motor vehicle, published at  
34 least once a week in each of 3 successive weeks in 1 or more newspapers of general  
35 circulation published in the county in which the action is pending.

36 (5) The answer shall comply with the Maryland Rules and:

- 37 (i) Set forth the nature and extent of the person's right, title, or  
38 interest in the property;

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1 (ii) Set forth the date and circumstances of the creation of the person's  
2 right, title, or interest in the property; and

3 (iii) Contain a request for relief.

4 (6) (i) The court shall set a hearing on the forfeiture claim within 60 days  
5 after the later of the posting or final publication of the notice under paragraph (4) of this  
6 subsection if an answer has been timely filed.

7 (ii) The court may order forfeiture without a hearing of the property  
8 interest of any person who fails to timely file an answer.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 1997.